

FIRST REGULAR SESSION

SENATE BILL NO. 545

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS LOUDON AND GRIESHEIMER.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1934S.011

AN ACT

To amend chapter 620, RSMo, by adding thereto eleven new sections relating to the establishment of the quality jobs program, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 620, RSMo, is amended by adding thereto eleven new sections, to be known as sections 620.1830, 620.1833, 620.1836, 620.1839, 620.1842, 620.1845, 620.1848, 620.1851, 620.1854, 620.1857, and 620.1860, to read as follows:

620.1830. Sections 620.1830 to 620.1860 shall be known and may be cited as the "Missouri Quality Jobs Program Act".

620.1833. As used in sections 620.1830 to 620.1860 the following terms shall mean:

(1) "Basic industry":

(a) Those manufacturing activities defined or classified in the NAICS Manual under Industry Sector Nos. 31, 32, and 33, Industry Group No. 5111 or Industry No. 11331;

(b) Those electric power generation, transmission, and distribution activities defined or classified in the NAICS Manual under U.S. Industry Nos. 221111 through 221122, if:

a. An establishment engaged therein qualifies as an exempt wholesale generator as defined by 15 U.S.C. Section 79z-5a;

b. The exempt wholesale generator facility consumes from sources located within the state at least ninety percent of the total energy used to produce the electrical output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto;

c. The exempt wholesale generator facility sells to purchasers located outside the state for consumption in activities located outside the state at least

ninety percent of the total electrical energy output which qualifies for the specialized treatment provided by the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations adopted pursuant thereto; and

d. The facility is constructed on or after July 1, 1996;

(c) Those administrative and facilities support service activities defined or classified in the NAICS Manual under Industry Group Nos. 5611 and 5612, Industry Nos. 51821, 52232, 56142, and 54191 or U.S. Industry Nos. 524291 and 551114;

(d) Those professional, scientific and technical service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 541710 and 541380, excluding therefrom:

a. Law firms;

b. Medical associations or partnerships;

c. Other professional affiliations formed for private profit;

(e) Warehouses which serve as distribution centers for retail or wholesale businesses, if forty percent of the inventory processed through such warehouse is shipped out-of-state;

(f) Those adjustment and collection service activities defined or classified in the NAICS Manual under U.S. Industry No. 561440, if seventy-five percent of the loans to be serviced were made by out-of-state debtors;

(g) Those air transportation activities defined or classified in the NAICS Manual under Industry Group No. 4811, if the following facilities are located in this state:

a. The corporate headquarters of an establishment classified therein; and

b. A facility or facilities at which reservations for transportation provided by such an establishment are processed, whether such services are performed by employees of the establishment, by employees of a subsidiary of or other entity affiliated with the establishment or by employees of an entity with whom the establishment has contracted for the performance of such services; provided, this provision shall not disqualify an establishment which uses an out-of-state entity or employees for some reservations services; or

(h) Those air transportation activities defined or classified in the NAICS Manual under Industry Group No. 4811, if an establishment classified therein has or will have within one year sales of at least seventy-five percent of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of section 620.1836, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government;

(i) The following, if an establishment classified therein has or will have

within one year sales of at least seventy-five percent of its total sales, as determined by the Incentive Approval Committee pursuant to the provisions of section 620.1836, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:

a. Those transportation and warehousing activities defined or classified in the NAICS Manual under Industry Subsector No. 493, if not otherwise listed in this paragraph, Industry Subsector No. 484 and Industry Group Nos. 4884 through 4889;

b. Those passenger transportation activities defined or classified in the NAICS Manual under Industry Nos. 561510, 561520, and 561599;

c. Those freight or cargo transportation activities defined or classified in the NAICS Manual under Industry No. 541614;

d. Those insurance activities defined or classified in the NAICS Manual under Industry Group No. 5241;

e. Those mailing, reproduction, commercial art, and photography and stenographic service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 541430, 541860, 541922, 561439, and 561492;

f. Those services to dwellings and other buildings, as defined or classified in the NAICS Manual under Industry Group No. 5617, excluding U.S. Industry No. 561730;

g. Those equipment rental and leasing activities defined or classified in the NAICS Manual under Industry Group Nos. 5323 and 5324;

h. Those employment services defined or classified in the NAICS Manual under Industry Group No. 5613;

i. Those information technology and other computer-related service activities defined or classified in the NAICS Manual under Industry Group Nos. 5112, 5182, 5191, and 5415;

j. Those business support service activities defined or classified in the NAICS Manual under U.S. Industry Nos. 561410 through 561439, Industry Group No. 5616 and Industry No. 51911;

k. Those medical and diagnostic laboratory activities defined or classified in the NAICS Manual under Industry Group No. 6215;

l. Those professional, scientific and technical service activities defined or classified in the NAICS Manual under Industry Group Nos. 5412, 5414, 5415, 5416, and 5417 and Industry Nos. 54131, 54133, 54136, 54137, and 54182, if not otherwise listed in this paragraph;

m. Those communication service activities defined or classified in the NAICS Manual under Industry Nos. 51741 and 51791;

n. Those refuse systems activities defined or classified in the NAICS Manual under Industry Group No. 5622, provided that the establishment is primarily engaged in the capture and distribution of methane gas produced within a landfill;

o. General wholesale distribution of groceries, defined or classified in the NAICS Manual under Industry Group Nos. 4244 and 4245; and

p. Those activities relating to processing of insurance claims, defined or classified in the NAICS Manual under U.S. Industry Nos. 524210 and 524292; provided, activities described in U.S. Industry Nos. 524210 and 524292 in the NAICS Manual other than processing of insurance claims shall not be included for purposes of this subdivision; or

(j) Those activities related to extraction of crude petroleum and natural gas defined or classified in the NAICS Manual under Industry Group No. 2111, subject to the limitations provided in paragraph (b) of this subdivision and subdivision (3) of subsection 1 of section 620.1836;

(k) An establishment described in subdivision (1) of this section shall not be considered to be engaged in a basic industry unless it offers, or will offer within one hundred eighty days of the date it receives the first incentive payment pursuant to the provisions of sections 620.1830 to 620.1860, a basic health benefits plan to the individuals it employs in new direct jobs in this state which is determined by the Missouri department of economic development to consist of the following elements or elements substantially equivalent thereto:

- a. Not less than fifty percent of the premium shall be paid by the employer;
- b. Coverage for basic hospital care;
- c. Coverage for physician care;
- d. Coverage for mental health care;
- e. Coverage for substance abuse treatment;
- f. Coverage for prescription drugs; and
- g. Coverage for prenatal care;

(2) "Department", the department of economic development;

(3) "Establishment", any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; limited liability company; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Missouri; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all purposes of sections 620.1830 to 620.1860, by the department subject to the following conditions:

(a) A minimum number of jobs in the amount of one hundred fifty for net new jobs and three hundred for retained, with an average overall minimum payroll of two million five hundred thousand dollars per annum;

(b) The subunit is engaged in an activity or service or produces a product which is demonstratively independent and separate from the entity's other activities, services or products and could be conducted or produced in the absence of any other activity, service or production of the entity;

(c) Has an accounting system capable of tracking or facilitating an audit of the subunit's payroll, expenses, revenue, and production. Limited interunit overlap of administrative and purchasing functions shall not disqualify a subunit from consideration as an establishment by the department;

(d) The entity has not previously had a subunit determined to be an establishment pursuant to this section; provided, the restriction set forth in this division shall not apply to subunits which qualify pursuant to the provisions of paragraph (b) of subdivision (6) of this section;

(e) It is determined by the department that the entity will have a probable net gain in total employment within the incentive period or will maintain an agreed to minimum number of employees for the incentive period, said minimum not to fall below three hundred;

(f) The department may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The department shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The department shall establish criteria for determining the period of time within which such gain must be demonstrated and a method for determining net gain in total employment;

(4) "Estimated direct state benefits", the tax revenues projected by the department to accrue to the state as a result of new direct jobs;

(5) "Estimated direct state costs", the costs projected by the department to accrue to the state as a result of new direct jobs. Such costs shall include, but not be limited to:

(a) The costs of education of new state resident children;

(b) The costs of public health, public safety, and transportation services to be provided to new state residents;

(c) The costs of other state services to be provided to new state residents;
and

(d) The costs of other state services;

(6) "Estimated net direct state benefits", the estimated direct state benefits less the estimated direct state costs;

(7) "Gross payroll", wages as that term is defined in the Internal Revenue Code, 26 U.S.C. Section 1 for new direct jobs and retained jobs as authorized herein;

(8) "NAICS Manual", any manual, book, or other publication containing the North American Industry Classification System, United States, 1997, promulgated by the Office of Management and Budget of the United States of America, or the latest revised edition;

(9) "Net benefit rate", the estimated net direct state benefits computed as a percentage of gross payroll; provided:

(a) Except as otherwise provided in this subdivision, the net benefit rate may be variable and shall not exceed five percent;

(b) The net benefit rate shall not exceed six percent in connection with an establishment which is owned and operated by an entity which has been awarded a United States Department of Defense contract for which:

a. Bids were solicited and accepted by the United States Department of Defense from facilities located outside this state;

b. The term is renewable for not less than twenty years; and

c. The average annual salary, excluding benefits which are not subject to Missouri income taxes, for new direct jobs created as a direct result of the awarding of the contract is projected by the department of economic development to equal or exceed twenty-eight thousand dollars within three years of the date of the first incentive payment;

(c) Except as otherwise provided in paragraph (d) of this subdivision, in no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits; and

(d) The net benefit rate shall be five percent for an establishment locating:

a. In an opportunity zone located in a high-employment county, as such terms are defined in subsection 8 of section 260.1836; or

b. In a county in which:

i. The per capita personal income, as determined by the department, is eighty percent or less of the statewide average per capita personal income;

ii. The population has decreased over the previous ten years, as determined by the state data center based on the most recent U.S. Department of Commerce data; or

iii. The unemployment rate exceeds the lesser of five percent or two percentage points above the state average unemployment rate as certified by the department of economic development;

(10) "New direct job", full-time-equivalent employment in this state in an

establishment which has qualified to receive an incentive payment or bond pursuant to the provisions of sections 620.1830 to 620.1860 which employment did not exist in this state prior to the date of approval by the department of the application of the establishment pursuant to the provisions of section 620.1836. New direct job shall include full-time-equivalent employment in this state of employees who are employed by an employment agency or similar entity other than the establishment which has qualified to receive an incentive payment and who are leased or otherwise provided under contract to the qualified establishment, if such job did not exist in this state prior to the date of approval by the department of the application of the establishment except as otherwise provided for herein. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at any time within six months prior to such approval. With respect to establishments defined in paragraph (j) of this subdivision, new direct jobs shall be limited to those jobs directly comprising the corporate headquarters of or directly relating to administrative, financial, engineering, surveying, geological, or geophysical services performed by the establishment. Under no circumstances shall employment relating to drilling or field services be considered new direct jobs;

(11) "Payment incentive" or "incentive payments", all payments received by or intended to be received by an establishment as authorized herein and shall also include any bond issued or authorized hereunder;

(12) "SIC manual", the 1987 revision to the Standard Industrial Classification Manual, promulgated by the Office of Management and Budget of the United States of America; and

(13) "Start date", the date on which an establishment may begin accruing benefits for the creation of new or retained direct jobs, which date shall be determined by the department.

620.1836. 1. The "Missouri Quality Jobs Incentive Approval Committee" is hereby created and shall consist of the director of the department of revenue, the director of the department of economic development, one member of the Missouri state tax commission appointed by the state tax commission, one member appointed by the pro tem of the senate who shall be a member of the senate committee on economic development, tourism and local government and one member appointed by the speaker of the house of representatives who shall be a member of the committee on economic development. It shall be the duty of the committee to determine:

(1) Upon initial application on a form approved by the committee, if an

establishment is engaged in a basic industry as defined in section 620.1833;

(2) If an establishment would have been defined as a basic industry prior to the amendments to this section to convert from SIC Codes to NAICS Codes. If the committee so determines, the establishment shall be considered as a "basic industry" for purposes of the Missouri quality jobs program act; and

(3) If employees of an establishment as defined in paragraph (j) of subdivision (1) of section 620.1833 meet the requirements to be considered employed in new or retained direct jobs as specified in subdivision (10) of section 620.1833.

2. Except as otherwise provided in subsection 10 of this section, an establishment which meets the qualifications specified in the Missouri quality jobs program act may receive quarterly incentive payments for a ten-year period from the state tax commission pursuant to the provisions of the Missouri quality jobs program act in an amount which shall be equal to the net benefit rate multiplied by the actual gross payroll of new direct jobs for a calendar quarter as verified by the Missouri department of economic development.

(1) It is further provided that the establishment may elect to obtain the net present value of the benefit in the form of an industrial revenue bond, as authorized elsewhere, for a period of years not to exceed ten and to be no less than five from date of issue, subject to the same terms and conditions otherwise set forth herein. It is authorized under this statute for the establishment to prepay the bond obligation in full under terms approved by the issuing authorities.

(2) As regards the industrial revenue bonds approved by this section, said bonds may be issued by the municipality or entity approved by the municipality where the project is located, subject to all applicable rules of reporting and repayment hereunder.

3. In order to receive incentive payments, an establishment shall apply to the Missouri department of economic development. The application shall be on a form prescribed by the department and shall contain such information as may be required by the department to determine if the applicant is qualified.

4. Except as otherwise provided by subsections 5 or 6 of this section, in order to qualify to receive such payments, the establishment applying shall be required to:

(1) Be engaged in a basic industry;

(2) Have a minimum number of jobs in an amount of one hundred fifty for net new jobs and three hundred for retained, with an average overall minimum payroll of two million five hundred thousand dollars per annum;

(3) Have a number of full-time-equivalent employees working an annual

average of twenty-five or more hours per week in new direct jobs equal to or in excess of eighty percent of the total number of new direct jobs;

(4) In no event shall any qualifying job earn less than twenty thousand dollars per annum including all benefits.

5. In order to qualify to receive incentive payments as authorized by the Missouri quality jobs act, an establishment engaged in an activity described under:

(1) Industry Group Nos. 3111 through 3119 of the NAICS Manual shall be required to:

(a) Have an annual gross payroll for new direct jobs projected by the department to equal or exceed one million five hundred thousand dollars within three years of the start date and make, or which will make within one year, at least seventy-five percent of its total sales, as determined by the Missouri job quality jobs incentive approval committee pursuant to the provisions of section 620.1836, to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, unless the annual gross payroll equals or exceeds two million five hundred thousand dollars in which case the requirements for purchase of output provided by this paragraph shall not apply; and

(b) Have a number of full-time-equivalent employees working an average of twenty-five or more hours per week in new direct jobs equal to or in excess of eighty percent of the total number of new direct jobs; and

(2) Those covered by paragraph (d) of subdivision (1) of section 620.1833, shall be required to:

(a) Have an annual gross payroll for new direct jobs projected by the Department to equal or exceed one million five hundred thousand dollars within three years of the start date; and

(b) Have a number of full-time-equivalent employees working an average of twenty-five or more hours per week in new direct jobs equal to or in excess of eighty percent of the total number of new direct jobs.

6. (1) An establishment which locates its principal business activity within a site consisting of at least ten acres which:

(a) Is a federal superfund removal site;

(b) Is listed on the National Priorities List established under Section 9605 of Title 42 of the United States Code;

(c) Has been formally deferred to the state in lieu of listing on the National Priorities List; or

(d) Has been determined by the department of natural resources to be

contaminated by any substance regulated by a federal or state statute governing environmental conditions for real property pursuant to an order of the department of natural resources, shall qualify for incentive payments irrespective of its actual gross payroll or the number of full-time-equivalent employees engaged in new direct jobs.

(2) In order to qualify for the incentive payments pursuant to this subsection, the establishment shall conduct the activity resulting in at least fifty percent of its Missouri taxable income or adjusted gross income, whether from the sale of products or services or both products and services, at the physical location which has been determined not to comply with the federal or state statutes described in this subsection with respect to environmental conditions for real property. The establishment shall be subject to all other requirements of the Missouri quality jobs act other than the exemptions provided by this subsection.

(3) In order to qualify for the incentive payments pursuant to this subsection, the entity shall obtain from the department of natural resources a letter of concurrence that:

(a) The site designated by the entity does meet one or more of the requirements listed in subdivision (1) of subsection 6 of this section; and

(b) The site is being or has been remediated to a level which is consistent with the intended use of the property.

In making its determination, the department of natural resources may rely on existing data and information available to it, but may also require the applying entity to provide additional data and information as necessary.

(4) If authorized by the department of natural resources pursuant to subdivision (3) of this subsection, the entity may utilize a remediated portion of the property for its intended purpose prior to remediation of the remainder of the site, and shall qualify for incentive payments based on employment associated with the portion of the site.

7. Except as otherwise provided by subsection 8 of this section, for applications submitted on and after the effective date of this act, in order to qualify to receive incentive payments as authorized by the Missouri quality jobs program, in addition to other qualifications specified herein, an establishment shall be required to pay new or retained direct jobs an average annualized wage which equals or exceeds fifty percent of the average county wage as that percentage is determined by the department of economic development based upon the most recent U.S. Department of Commerce data for the county in which the new jobs are located. For purposes of this subdivision, healthcare premiums paid by the applicant for individuals in new direct jobs shall not be included in the

annualized wage.

8. As used in this subsection, "opportunity zone" means one or more census tracts in which, according to the most recent federal decennial census, at least thirty percent of the residents have annual gross household incomes from all sources below the poverty guidelines established by the U.S. Department of Health and Human Services. An establishment which is otherwise qualified to receive incentive payments and which locates its principal business activity in an opportunity zone shall not be subject to the requirements of subsection 7 of this section.

9. The department shall determine if the applicant is qualified to receive incentive payments.

10. If the applicant is determined to be qualified by the department and is not subject to the provisions of paragraph (d) of subdivision (9) of section 620.1833, the department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a ten-year period and to estimate the amount of gross payroll for a ten-year period. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and such other criteria as deemed appropriate by the department. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits, except for applicants subject to the provisions of paragraph (d) of subdivision (9) of section 620.1833.

11. Upon approval of such an application, the department shall notify the state tax commission and shall provide it with a copy of the application and the results of the cost/benefit analysis. The state tax commission may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of the Missouri quality jobs program act. The approved establishment shall report to the state tax commission periodically to show its continued eligibility for incentive payments, as provided in section 620.1842. The establishment may be audited by the state tax commission to verify such eligibility. Once the establishment is approved, an agreement shall be deemed to exist between the establishment and the state of Missouri, requiring the continued incentive payment to be made as long as the establishment retains its eligibility as defined in and established pursuant to this section and sections 620.1833 and 620.1842 and within the limitations contained in the Missouri quality jobs program act, which existed at the time of such approval.

620.1839. There is hereby created within the state treasury a special fund for the state tax commission to be designated the "Quality Jobs Program Incentive

Payment Fund". The state tax commission is hereby authorized and directed to withhold a portion of the taxes for deposit into the fund. The amount deposited shall equal the sum of an amount determined by multiplying the net benefit rate provided by the department of economic development by the gross payroll as determined pursuant to the provisions of subdivision (9) of section 620.1833. All of the amounts deposited in such fund shall be used and expended by the state tax commission solely for the purposes and in the amounts authorized by the Missouri quality jobs program act. The liability of the state of Missouri to make the incentive payments under this act shall be limited to the balance contained in the fund created by this section.

620.1842. 1. As soon as practicable after the end of a calendar quarter for which an establishment has qualified to receive an incentive payment, the establishment shall file a claim for the payment with the state tax commission and shall specify the actual number and gross payroll of new direct jobs for the establishment for the calendar quarter; provided, in no event shall the first claim for incentive payments be filed later than three years from the start date designated by the Missouri department of economic development. The state tax commission shall verify the actual gross payroll for new direct jobs for the establishment for such calendar quarter. If the state tax commission is not able to provide such verification utilizing all available resources, the state tax commission may request such additional information from the establishment as may be necessary or may request the establishment to revise its claim.

2. If the actual verified gross payroll and agreed to job numbers for four consecutive calendar quarters does not equal or exceed the applicable total required by section 620.1836 within three years of the start date, or does not equal or exceed the applicable total required by section 620.1836 at any other time during the ten-year period after the start date, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll and job numbers equals or exceeds the amounts otherwise agreed to. Any failure on the part of an establishment to satisfy its agreed to obligations of payroll and jobs for four consecutive quarters, the establishment may be held liable for and required to repay all payments received to date at the discretion of the commission. In the event the establishment has opted for a bond based on net present value, then the establishment is liable for and must repay the bond in full with all appropriate penalties to the issuing authority.

3. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits, except for establishments subject to the provisions of paragraph (d) of subsection (9) of section 620.1833.

4. An establishment that has qualified pursuant to section 620.1836 may receive payments only in accordance with the provisions of the law under which it initially applied and was approved. If an establishment that is receiving incentive payments expands, it may apply for additional incentive payments based on the gross payroll and jobs anticipated from the expansion only, pursuant to section 620.1836.

5. An establishment that is receiving incentive payments may not apply for additional incentive payments for any new projects until twelve quarters after receipt of the first incentive payment, or until the establishment's actual verified gross payroll for new direct jobs equals or exceeds two million five hundred thousand dollars during any four consecutive-calendar-quarter period, whichever comes first. After meeting the requirements of this subsection, an establishment may apply for additional incentive payments based upon the gross payroll anticipated from an expansion only.

6. As soon as practicable after verification of the actual gross payroll as required by this section, the state tax commission shall issue a warrant to the establishment in the amount of the net benefit rate multiplied by the actual gross payroll as determined pursuant to subsection 1 of this section for the calendar quarter.

620.1845. If a qualified establishment receives an incentive payment pursuant to the provisions of sections 620.1830 to 620.1860, neither the qualified establishment nor its contractors or subcontractors shall be eligible to receive the credits or exemptions provided for in chapter 135, RSMo.

620.1848. The department of economic development and the state tax commission shall promulgate rules necessary to implement their respective duties and responsibilities under sections 620.1830 to 620.1860. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

620.1851. Any person making an application, claim for payment or any report, return, statement, or other instrument or providing any other information pursuant to the provisions of this act who willfully makes a false or fraudulent application, claim, report, return, statement, invoice, or other instrument or who

willfully provides any false or fraudulent information, or any person who willfully aids or abets another in making such false or fraudulent application, claim, report, return, statement, invoice, or other instrument or who willfully aids or abets another in providing any false or fraudulent information, upon conviction, shall be guilty of a felony punishable by the imposition of a fine of not less than one thousand dollars and not more than fifty thousand dollars, or imprisonment for not less than two years and not more than five years, or by both such fine and imprisonment. Any person convicted of a violation of this section shall be liable for the repayment of all incentive payments which were paid to the establishment. Interest shall be due on such payments at the rate of ten percent per annum.

620.1854. The Missouri department of economic development shall prepare triennially a report which shall include, but not be limited to, documentation of the new direct jobs created under the Missouri quality jobs program act and a fiscal analysis of the costs and benefits of the program to the state. The report shall be submitted to the president pro tempore of the senate, the speaker of the house of representatives, and the governor of this state no later than March 1, 2006, and every three years thereafter. The report may be used for the purpose of determining whether to continue or sunset the Missouri quality jobs program act.

620.1857. 1. For purposes of the payroll projection required to be made by the department of economic development pursuant to subdivision (2) of subsection 4 of section 620.1836, the department of economic development shall include payroll for all jobs created by an establishment as a result of an expanded or new facility, regardless of whether the jobs meet the definition of new direct jobs if:

(1) The establishment is defined or classified under Industry Numbers 3443, 3556 or 3728 of the Standard Industrial Classification (SIC) Manual, latest version;

(2) The new jobs were not created by the establishment more than ten calendar quarters prior to the date of approval of the application by the department of economic development; and

(3) The establishment's application is approved by the Department of Commerce prior to January 30, 2006.

2. When payroll described in subsection 1 of this section is included by the department of economic development in the projection required by subdivision (2) of subsection 4 of section 620.1836, then the three-year period of such projection shall begin the month after included payroll is first paid by the establishment, and not on the anticipated date on which the establishment will receive its first incentive payment.

3. For the purpose of determining if an establishment has met the

requirements of subsection 2 of section 620.1842, the state tax commission shall include payroll for any jobs which the department of economic development included in its projection pursuant to the provisions of subsection 1 of this section. If payroll for such jobs is included, then the three-year period defined in subsection 2 of section 620.1842 shall begin the month after included payroll is first paid by the establishment and not on the date of the first incentive payment.

4. For the purpose of calculating incentive payments as provided by section 620.1842, the state tax commission shall include payroll for those jobs which meet the requirements of subsections 1 and 3 of this section regardless of whether such jobs fall within the definition of a new direct job; provided, an establishment shall in no event be entitled to such incentive payments on payroll made prior to the date of approval of its application by the department of economic development.

620.1860. For purposes of the determination required to be made by the department of economic development pursuant to subdivision (10) of section 620.1833, the department shall include jobs created or retained by an establishment as a result of a retained, expanded or new facility if:

(1) The establishment and jobs are defined or classified under Industry Number 326211 of the NAICS Manual;

(2) The minimum threshold retention is three hundred jobs;

(3) The establishment's application has been approved by the department of economic development prior to March 30, 2006, and approved by the committee in a timely fashion;

(4) The establishment, in order to be eligible under this section, for retention purposes must meet the following criteria to the satisfaction of the committee at its discretion:

(a) The retention would not occur but for the incentive;

(b) The economic benefit of retention outweighs the cost of the incentive;

and

(c) The establishment agrees to a minimum time frame of not less than five years;

(5) Notwithstanding any of the foregoing, in no event shall any payment incentive authorized hereunder be approved for an expansion, retention or consolidation that involves a consolidation or loss of jobs from one municipality to another, except where the municipality that is losing jobs authorizes same in writing to the commission.